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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/700,057

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Colin Brown

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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER

WHITE, EVERETT NMN

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

03/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/700,057	BROWN, COLIN	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,26-35 and 45-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23,26-35 and 45-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1623

DETAILED ACTION

1. The amendment filed December 11, 2007 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Claims 1-22, 24, 25 and 36-44 were previously canceled;
 - (B) Comments regarding Office Action have been provided drawn to:
 - (I) 103(a) rejection, which is maintained for the reasons of record.
2. Claims 23, 26-35 and 45-83 are pending in the case.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 23, 26-35 and 45-83 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbie ("Separation of Peritoneal Surfaces Through the Maintenance of an Artificial Ascites as a Preventative of Peritoneal Adhesions" Abstract, from The 4th Peritoneum and Peritoneal Access Meeting, September 16-19, 1997, already of record) in view of Milner (US Patent No. 4,886,789) or Treutner et al (Journal of Surgical Research, "Prevention of Postoperative Adhesions by Singly Intraperitoneal Medication", Vol. 59, pages 764-771 (1995)) for the reasons disclosed on pages 3-5 of the Office Action filed July 16, 2007.

Art Unit: 1623

5. Applicant's arguments filed December 11, 2007 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the statement disclosed in the Dobbie reference that "the International Peritoneal Biopsy Registry (IPBR) advocates the use of glucose polymer (Icodextrin) for use post-operatively in patients with a high risk of abdominal adhesions" does not lead one of ordinary skill in the art to the methods recited in the independent claims of the present application. This argument is not persuasive because when one of ordinary skill in the art considers the reference as a whole, which talks about the separation of peritoneal surfaces and preventative measures of peritoneal adhesions, along with said statement, one of ordinary skill in this art would realize that the topic includes reducing the incidence of post-operative adhesions in a body cavity using a glucose polymer (Icodextrin) solution. One of ordinary skill in this art in view of the Treutner et al reference would also know the length of time needed for the solution to remain in the body cavity to be effective. See lines 20 and 21 in the abstract of the Treutner et al reference, wherein after a single intraperitoneal administration of various substances in groups of rabbit models, Treutner discloses that ten days later the extent of adhesions was quantified by morphometry.

The teaching of the Dobbie reference for the development of a glucose polymer (Icodextrin) solution for use in peritoneal dialysis as a dialysate as well as for use post-operatively in patients with a high risk of abdominal adhesions motivates one to combine the teaching of the Milner patent, which discloses a dextrin for use as a peritoneal dialysis composition having 15% polymers with a degree of polymerization greater than 12, which is identical to the dextrin described in the instant claims. It would be obvious to one of ordinary skill in this art having the Dobbie reference and Milner patent before him to incorporate the dextrin of the Milner patent as a preventative of peritoneal adhesions for use post-operatively in patients with a high risk of abdominal adhesion.

Accordingly, the rejection of Claims 23, 26-35 and 45-83 under 35 U.S.C. 103(a) as being unpatentable over the Dobbie reference in view of the Milner patent or the Treutner et al reference is maintained for the reasons of record.

Summary

6. All the pending claims (Claims 23, 26-35 and 45-83) are rejected.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is 571-272-0660. The examiner can normally be reached on 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Everett White/

Examiner

Art Unit 1623

/Shaojia Anna Jiang, Ph.D./

Supervisory Patent Examiner, Art Unit 1623